

## REMARKS

Claims 1-14 are pending and stand rejected. Claims 1, 11 and 14 have been amended.

### Rejection of Claims 1, 4, 5, 11, 12, and 14 under 35 U.S.C. § 103(a)

Claims 1, 4, 5, 11, 12, and 14 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application No. 2001/0021196 A1 (“Weigl”) in view of U.S. Patent No. 5,396,494 (“Roposh”). Applicant respectfully submits that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended claim 1 recites, in relevant parts, “dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot in such a way that a message provided for the at least one transmission time slot is transmitted repeatedly within the at least one transmission time slot.” Amended claims 11 and 14 recite substantially similar features as the above-recited features of claim 1.

The Examiner states that although “Weigl fails to explicitly teach a transmission rate within a transmission time slot being changeable,” Roposh allegedly teaches “that **a time frame may be divided into a greater or lesser number of time slots** merely by *increasing or decreasing the transmission rate* (see column 7 lines 60-66).” (Office Action, page 2, emphasis added). However, Roposh clearly does not teach or suggest that such an increase or decrease occurs dynamically, i.e., Roposh does not suggest anything about “dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot.” As noted in the previous Response, the cited section of Roposh merely states a logical fact, i.e., in a scenario where the overall time frame remains fixed in length and the number of time slots depends on dividing the time frame by the transmission rate, then a change in the transmission rate will change the proportional number of time slots. However, stating this logical fact does not in any way disclose or suggest a system that actually changes transmission rates, let alone suggest “dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot.”

To the extent the Examiner states in the “Response to Arguments” section of the Office Action that “given the broadest reasonable interpretation, the Roposh reference teaches that the time frame transmission rate is changeable by dividing the frame into greater or lesser number of time slots,” Applicants note that the “broadest reasonable interpretation” of the teachings of Roposh cannot suggest any sort of dynamic change of the transmission rate, during transmission of messages, as recited in claims 1, 11 and 14. In this regard, not only does Roposh fail to teach or suggest anything about dynamic change of the transmission rate, during transmission of messages, but the disclosure of Roposh actually suggests the exact opposite of the claimed limitation, i.e., different fixed transmission rates may be implemented for different fixed embodiments. For example, col. 7, l. 15-21 state that the invention “advantageously serves different ones of **well-known data rates** transmitted in accord with **a particular data transmission standard**. Such data rates may be, for example, the **well-known DS1 and DS3 data rates**, which, as is well-known, respectively define data rates of 1.544 Mb/s and 44.736 Mb/s . . . .” Accordingly, while Roposh indicates the use of “a particular data transmission standard” from the available different standards, there is no suggestion in Roposh that during transmission using a particular transmission standard (and corresponding transmission rate), a change to a different transmission standard (and corresponding transmission rate) is made.

For at least the foregoing reasons, independent claims 1, 11, and 14, as well as their dependent claims 4, 5 and 12, are allowable over Weigl in view of Roposh.

**Rejection of Claims 2, 3, 6-10, and 13 under 35 U.S.C. § 103(a)**

Claims 2, 3, 8-10, 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl and Roposh in further view of U.S. Patent No. 4,709,376 ("Kage"). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl and Roposh, in further view of U.S. Patent Application No. 2002/0126691 ("Strong"). Applicant respectfully submits that the rejections should be withdrawn for at least the following reasons.

Claims 2, 3, 6-10 and 13 ultimately depend from claim 1 or claim 11. As noted above in connection with claims 1 and 11, Weigl and Roposh fail to teach or suggest "dynamically changing, during transmission of messages, the transmission rate for at least one transmission time slot in such a way that a message provided for the at least one transmission time slot is transmitted repeatedly within the at least one transmission time slot." Since the secondary references Kage and Strong clearly do not remedy the deficiencies of Weigl and Roposh as applied against parent claims 1 and 11, the overall teachings of Weigl, Roposh, Kage and Strong cannot render obvious dependent claims 2, 3, 6-10 and 13.

For at least the foregoing reasons, rejections of claims 2, 3, 6-10 and 13 should be withdrawn.

**CONCLUSION**

It is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully Submitted,

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